IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Champa Lal
vs.
Mohan Lal.

S.B.CIVIL SECOND APPEAL NO.441/2005 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 25.8.2005 PASSED BY SHRI RAMCHANDRA SINGH JHALA, ADDITIONAL DISTRICT JUDGE NO.3, UDAIPUR IN CIVIL APPEAL NO.51/1997.

DATE OF JUDGMENT ::: 13.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Mathur, for the appellant.
Mr. T Gupta, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties and perused the record.

The appellant is aggrieved against the concurrent findings recorded by the two courts below in the judgments and decrees dated 2.1.1997 and 25.8.2005.

Brief facts of the case are that the plaintiff/landlord filed suit for eviction of his tenant/defendant on the ground that the suit premises is required for personal bonafide need of his son Om Prakash who want to start photography business in the suit shop. The plaintiff produced one more witness Yashwant Lal in addition to giving his own statement and his son's statement. The defendant no.1 also produced five witnesses.

Two courts below, after considering the facts of the case and evidence available on record in detail reached to the conclusion that the plaintiff fully proved his need and in case, the suit shop will not be made available to the plaintiff, the plaintiff will suffer greater hardship. The finding of fact recorded by the trial court was upheld by the first appellate court after considering each and every witness and I do not find that such finding based on evidence can be interfered in second appeal.

In view of the above, I do not find that any substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that sufficient time may be granted to vacate the suit premises because the appellant is running his business in the suit shop since long and he will have to make alternative arrangement and wind up his business.

Looking to the totality of the facts, this Court deems that the appellant be granted some time to vacate the suit shop.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month from today that he shall hand over the vacant possession to the landlord by or before 31.8.2006 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.9.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya